MINNESOTA POLLUTION CONTROL AGENCY ENFORCEMENT DEFERRAL PILOT PROJECT

INTRODUCTION

The United States Environmental Protection Agency (U.S. EPA) and the Minnesota Pollution Control Agency (MPCA) have agreed to conduct an Enforcement Deferral Pilot Project to demonstrate full accountability for State enforcement-lead Superfund sites without Federal oversight/intervention. This Enforcement Deferral Pilot will gather information that can be used to demonstrate MPCA's capability for State authorization and/or referral. The first year of the pilot is Federal fiscal year 1995, from October 1, 1994 through September 30, 1995.

The State of Minnesota has historically played a significant role in the implementation of the Superfund program within Region V. The MPCA has demonstrated both an interest and a willingness to invest its staff and resources into site cleanup activities. Of the 36 currently active National Priorities List (NPL) sites within the State (43 NPL sites total), MPCA has the lead on 26 NPL sites, which is 72%. Of these 26 sites, 20 are being addressed as State-enforcement leads and 6 are State-lead CERCLA fund financed.

In addition, the MPCA has been active in the implementation of the Minnesota Environmental Response and Liability Act (MERLA) of 1983 to investigate and cleanup releases of hazardous substances, pollutants, or contaminants. The MPCA will administer the Enforcement Deferral Pilot through its authority under MERLA.

ENFORCEMENT DEFERRAL PILOT

Under the Enforcement Deferral Pilot, MPCA will assume full responsibility at the following 13 State-enforcement lead sites.

Agate Lake
Baytown Township ***
General Mills
Joslyn
~~*Koch Refining/N ReN Corp.*~~ *(delisted)*
Koppers Coke
Kurt Manufacturing
FMC
Nutting Truck and Caster Co.
St. Louis River *
UMRRC
Waite Park Water Supply **
Whittaker
Windom

* *Includes Interlake and USX State sites.*
** *Includes Waite Park Wells, Electric Machinery, and Burlington Northern State sites.*
*** *Baytown Township was added to the pilot after its start. Boise Cascade - Onan & Medtronic were removed from the original pilot sites.*

This assumption of responsibilities includes: utilizing State authorities to investigate and cleanup these sites; conducting the necessary enforcement actions available to the State of Minnesota; and, planning and reporting site progress information to U.S. EPA.

As part of this pilot, U.S. EPA is deferring to the MPCA on site decisions and will no longer oversee MPCA on the designated sites. U.S. EPA will not review technical documents or decision documents, nor concur on any Records of Decision (RODs) or equivalents issued as a result of the pilot. However, U.S. EPA will retain approval/concurrence of 5 year reviews and final site closeout reports for Agate Lake, UMRRC, Waite Park and Windom Municipal Dump because U.S. EPA previously concurred on RODs for these sites. U.S. EPA's role with regard to all of the Enforcement Deferral Pilot sites is to ensure that the selected remedies are protective of human health and the environment and that decisions made by the MPCA are not inconsistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). U.S. EPA does not plan or anticipate any Federal action under CERCLA as long as these conditions are met.

U.S. EPA has historically awarded funds to MPCA for several of the State-enforcement lead sites. As part of this pilot, U.S. EPA will not provide site specific Cooperative Agreement funds for the Enforcement Deferral Pilot sites.

ADDING AND REMOVING SITES

Additional sites may be added to the Enforcement Deferral Pilot provided they meet the pilot criteria and both Agencies mutually approve of their inclusion.

Sites can be removed from the pilot provided the MPCA has exhausted its enforcement authorities against the site's responsible parties. In addition, a site can be removed from the pilot if both Agencies mutually agree that there is a more efficient/cost effective manner of proceeding towards site cleanup. The MPCA would request U.S. EPA's approval for removing sites from the pilot. These removed sites would be subject to CERCLA authorities.

SCHEDULING AND REPORTING

Scheduled milestones for the 13 Enforcement Deferral Pilot sites have been reviewed and re-targeted by MPCA. These site milestone schedules are in Table 1. MPCA intends to accomplish site activities on or before the targeted dates. Changes to the site schedules will be reflected in semi-annual updates to Table 1 by MPCA. These updates will coincide with the Enforcement Deferral

Pilot reviews conducted at the agencies' mid-year and end-of-year reviews. The CERCLIS database shall be amended to reflect the current Enforcement Deferral Pilot site schedules and any subsequent changes.

Because the CERCLA and MERLA processes are not identical, the two agencies have/will establish equivalents for some of the CERCLA-required milestones. One example is the MPCA will provide U.S. EPA with preliminary close-out reports (PCORs) for those pilot sites where construction has been completed on the last operable unit and a pre-final inspection has been conducted. U.S. EPA understands that PCORs are not required under the provisions of MERLA. Another example is the MPCA will provide U.S. EPA with 5 year reviews for all pilot sites to ensure that the implemented remedy continues to provide adequate protection of human health and the environment, even though U.S. EPA concurrence is not required.

As site targets are met, MPCA shall issue an approval letter or document which allows the milestone target to be turned into an actual date. Until MPCA has access to the CERCLIS database, the MPCA pilot contact person shall inform the U.S. EPA pilot contact person of the milestone accomplishment date. When MPCA is granted access to the CERCLIS database, milestone accomplishment dates can be entered by MPCA.

MEASURING THE SUCCESS OF THE PILOT

Since one of the objectives of the Enforcement Deferral Pilot is to gather information that could be used as part of an assessment of capability for authorization and/or referral, an assessment process is essential.

Within 45 days of the end of each Federal fiscal year (September 30th) for which the pilot is conducted, MPCA shall prepare a report which assesses its success in meeting the milestones targeted. The format of the report shall be:

1) Introduction; Statement of Purpose
2) Narrative Highlighting Work Accomplished During the Reporting Period
3) Narrative Highlighting Problems Encountered During the Reporting Period
4) Narrative Highlighting Corrective Measures Taken or Planned
5) Prospective Analysis of Actions Targeted for Next Reporting Period.

The measure of success of the Enforcement Deferral Pilot will be demonstrated in three areas. The first area is the capability of MPCA to meet all or a majority of the targeted milestones on or before the targeted date. This will be depicted in the annual

report with a site-by-site analysis of each target planned for the reporting period. The report will acknowledge the actual date that the milestone is achieved, or analyze the basis of the actual date not being achieved. The second area is the quality of the remedies being implemented. The report will analyze the approval letters or Records of Decision issued. For remedies selected prior to the pilot, the quality of the remedies will be evaluated in MPCA's review and approval of the operation and maintenance report. The third area is the level of community participation. This will be analyzed and reported in the annual report.

The opportunity for dialog between U.S. EPA and MPCA regarding the on-going progress of the pilot exists during the course of the mid-year and end-of-year reviews. These semi-annual reviews shall incorporate the Enforcement Deferral Pilot as a standing item on each meeting agenda.

LENGTH OF THE PILOT

As structured, there are enough controls and measures to assess the success of the Enforcement Deferral Pilot. Annual reports, mid-year and end-of-year reviews provide opportunities to document progress. U.S. EPA will use these opportunities to determine whether or not the pilot will continue. It is, however, U.S. EPA's intention that the Enforcement Deferral Pilot will end once the last pilot site event has been completed. MPCA reserves the right to withdraw from the pilot due to funding/resource constraints.

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Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
Nutting Truck & Caster Co	1	2nd FA		99/2	
		Final COR		04/2	
St. Louis River	2 (USX)				
	2a	RI/FS	96/1	96/1	96/2
	Coke Plant	ST PUB CMT	96/3	96/1	96/4
	Settling Basin	ROD or ESD	96/4	96/2	96/4
		RD	96/4	96/2	97/1
		RA	97/1	96/4	97/4
		FA		01/4	02/3
	2b	RI/FS	96/1	95/4	96/2
	Wire Mill	ST PUB CMT	96/3	96/1	96/4
	Pond	ROD or ESD	96/4	96/2	96/4
		RD	96/4	96/2	97/1
		RA	97/1	96/4	97/4
		FA			02/3
	2c	RI/FS	96/2	95/4	96/4
	Contaminated	ST PUB CMT	96/4	96/1	97/1
	Sediments	ROD or ESD	97/1	96/2	97/1
		RD	97/2	96/3	97/2
		RA	97/3	96/4	99/1
		PCOR		97/1	99/1
		FA		01/4	02/3
		Final COR		97/3	99/3
	3(SLRIDT)	RD	96/1	96/2	96/3
	Soil	RA	96/3	97/4	98/1
		FA			01/3
	4(SLRIDT)	RI/FS		98/2	
	Sediment	ST PUB CMT		97/4	
		ROD		98/2	
		RD	98/2	99/1	
		RA	99/1	02/1	
		PCOR			02/2
		FA			03/3
		Final COR			12/2

TABLE 2

FY 1996 Deferral Pilot Site Milestone Schedule

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
Agate Lake	1	FA		99/4	
		Final COR		00/1	
Baytown Township	1	RI/FS	96/4	98/1	
		Public Comment Period	98/2	98/2	
		ROD	98/2	98/4	
		RD	99/1	00/1	
		RA	00/1	01/3	
		PCOR		01/4	
		FA		05/1	
		Final COR		02/2	
FMC	1	2nd FA		97/4	
		Final COR		97/1	
General Mills		2nd FA		99/4	
		Final COR		06/4	
Joslyn	1 shallow gw	PCOR		96/1	
		FA		96/1	
		Final COR		96/3	
	2 deep gw	FA		96/1	
	3 DNAPL	FA		96/1	
	4 Soil	FA		96/1	
Koppers Coke	1	RD	94/3	95/1	97/2
		RA	95/4	96/1	97/4
		PCOR		98/1	
		FA		01/4	
		Final COR		06/4	
Kurt Manufacturing	1	2nd FA		99/4	01/1
		Final COR		04/4	

Site	Operable Unit	Event	Planned Start	Planned Complete	Revised Complete
UMRRC	1 Ground water	FA Final COR		97/3	
	2 Lead soil	FA Final COR		97/3	
	3 PCB soil	FA Final COR		97/3 96/3	
Waite Park Water Supply (Electric Machinery) (Burlington Northern)	1(EM) 2(BN)	2nd FA RA PCOR FA Final COR	94/3	99/2 97/4 97/1 99/3 07/4	96/4
Whittaker	1	RA Final COR		96/4 97/4	
Windom	1	2nd FA Final COR		99/2 20/1	

Milestones and Definitions

NA = Not Applicable

NL = Not Listed

NC = No Change

RI/FS = Remedial Investigation/Feasibility Study

ST PUB CMT = Start Public Comment Period

ROD = *Record of Decision*

RD = Remedial Design Completion

PCOR = Preliminary Completion Report documents completion of physical construction for entire site. The PCOR is done between the prefinal inspection and final inspection.

RA = Response Action Completion Report. Documents completion of an operable unit.

FA = five year review starts five years after the responsible party begins substantial and continuous physical action, which is equivalent to an EPA contract award.

Final COR = Final Close Out Report. Documents completion of the entire site, including attaining cleanup levels.

* Milestones are for operable units requiring the longest timeframe for completion. Additional operable units may be identified which will need a longer timeframe (e.g. sediments). Other operable units will be completed sooner.

** The planned completion date for the five year review of the no action decisions in the 1989 ROD is 12/31/95.